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**GLOBALISATION AT
THE CROSSROADS:
POPULISM,
PROTECTIONISM AND
TRADE – WHAT IT
MEANS FOR BUSINESS**



– THOUGHT LEADERSHIP

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GLOBALISATION AT THE CROSSROADS: POPULISM, PROTECTIONISM AND TRADE – WHAT IT MEANS FOR BUSINESS

The rise of populism, protectionism, and increasing tensions in trade around the globe, are having a significant impact on businesses and how they prepare for the future. Here, Clifford Chance experts identify the trends that will have far-reaching economic and legal consequences.

Europe – what's next?

“Europe is facing extreme challenges caused by the “new wave” of trade wars initiated by the US and China,” says Paris-based Partner, Katrin Schallenberg. But she adds that the EU has an important role to play in this context. “For several years the European Commission has been pushing an ambitious trade agenda and the EU has traditionally played a strong role as a supporter of, and driving force for, free trade, not only between Member States, but also with third countries. “While the US has pulled out of its trade negotiations with the EU and Trump is focusing on “America first,” the EU successfully continues to negotiate bilateral deals – the recent Comprehensive Economic Trade Agreement (CETA) between the EU and Canada, for example, is regarded as a major milestone,” she says.

Towards the beginning of the Trump Presidency there was a general fear that European companies could come under US trade sanctions and that the EU would be forced into a trade war with the US. However, the EU has managed to push back, and President Trump seems to have backed off from his initial announcements to sanction European imports. “One has to recognise that the European Commission and DG Trade in particular, have done a pretty good job in discouraging the US from imposing tariffs that could have led to very unpopular retaliation measures (Harley Davidson, for example),” says Schallenberg.

The impact on European companies mainly relates to China: tariffs imposed by China on US imports hit certain European companies, in particular, German car manufacturers who have based their production sites in the US; and, indirectly,

European steel producers due to Chinese manufacturers ramping up imports into the EU given the tariffs imposed on Chinese imports into the US.

Another direct consequence of President Trump's trade politics is an almost total lock down of the WTO system. The WTO system and anti-dumping complaints to the European Commission no longer seem to be a central pillar. The WTO Appellate Body is down to only three members instead of seven, as the US has been blocking new appointments. The EU Commission has very recently published a paper proposing a reform of the WTO system and the EU could play a very prominent role.

There is a counter-trend of protectionism, says London-based Partner Jessica Gladstone. There is a tension between the promotion of open markets on the one hand and the introduction of more and more far-reaching foreign investment controls on the other. Not only are member states increasingly adopting measures to restrict and control foreign investments and expanding existing regimes – France and Germany for instance – but the EU itself is contemplating an EU wide system of coordination in this field. “Foreign investment rules are becoming a real jungle with obscure and unpredictable procedures,” she says.

Schallenberg adds that although there are some voices claiming that EU policies around data protection and antitrust enforcement are aimed at fighting off foreign competition, she believes “these policies simply reflect a deeply imbedded European culture of protecting individuals from corporate interests and of intervention in favour of fair competition.” Some major

US tech companies are starting to embrace privacy policies and recently Facebook and Apple have publicly encouraged the US government to enact similar rules for data protection.

Regarding antitrust she says there is a willingness by the EU Commission and certain national authorities to tackle issues around access to data and fair competition in the tech space.

Brexit and the future of the EU

With the UK poised to leave the EU in March 2019, Brexit raises a number of questions about the concept of ever-closer integration between member states and the future direction of the EU. Anti-EU feeling is gaining traction as populist parties across Europe win support. Matteo Salvini, leader of Italy's far-right League party and Interior Minister and deputy prime minister, has described next year's European elections as an opportunity to build an "international alliance of populists" which will take on the "Europe of the elites."

Luxembourg-based Partner Steve Jacoby says Europe is at a crossroads: "On the one hand, we see in many Member States calls to halt or even retract from closer integration, while on the other hand, in practice, the European integration process is moving faster than ever before in terms of the amount, density and level of detail of European legislation." He adds that Europe is becoming more complex with a core forming around the Eurozone. "A common currency, the Banking Union, the model of the Single Rulebook and single authorities such as the European Central Bank, the Single Resolution Board and the European Supervisory Authorities have created a new paradigm," he says.

Brexit, fuelled by a determination "to take back control" from Europe, is just one form of populism that has swept the UK; Jeremy Corbyn's Labour Party, with its manifesto promise to nationalise rail, water and energy companies, is another. Investors in UK infrastructure are concerned that if Labour wins the next general election, then they could lose

control of that investment without adequate compensation – one sovereign wealth fund has put £5billion of investment on hold due to the uncertainty. Businesses will need to plan for such an eventuality.

China's growing influence

"Most of the recent developments regarding trade in Asia-Pacific are driven by the contrasting positions of China and the US," says Perth-based Partner Jenni Hill. "The US has rejected multilateral trade treaties at a time when these treaties have an increasingly important role in the Asia-Pacific region and its engagement with the rest of the world." President Trump's declared position of 'America First' is diametrically opposed to that of China, which has publicly stated its commitment to economic globalisation.

The US was originally the major negotiating force behind the Trans-Pacific Partnership (TPP) which aimed to deepen economic ties, cut tariffs and foster trade between 12 countries bordering the Pacific Ocean. President Trump withdrew the US from the TPP on his first day in office and the 11 remaining countries (Australia, Japan, Malaysia, Vietnam, Singapore, Canada, Brunei, New Zealand, Mexico, Chile and Peru) agreed to move forward without the US, renaming TPP the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which was signed in March 2018. "The US's withdrawal has strengthened China's position and leadership on a regional basis," says Hill. She adds that there is continuing debate about the role and scope of free-trade agreements as they move beyond discussions for the removal of tariffs and encouragement of trade to the imposition of a level (or at least more level) playing field. "Three areas that increasingly are becoming sticking points in the negotiation of these agreements are: the protection of intellectual property rights; free movement of people and aspects relevant to the social licence to operate including working conditions, environmental impact and business human rights," she says.



Infrastructure will also have an impact on China's influence on the region. China's Belt and Road Initiative (BRI) was launched by President Xi in 2013 as an ambitious plan to recreate China's historic Silk Road and maritime trading routes connecting Asia, Africa and Europe. Its focus is on railways, power stations and roads. It covers 74 countries, accounting for two-thirds of the world's population and one-third of GDP.

"China's influence is increasing regionally. This is causing a degree of anxiety in a number of countries that have traditionally had significant regional influence – including Japan, the US and Australia – and how this will impact on trade routes and military links within the region," says Hill.

While it is clear that BRI will offer a range of opportunities for businesses around the globe, it also comes with a number of challenges, including political instability in countries along its route and widely differing regulatory and legal systems. Many of the countries along BRI are still developing, so their regulatory and legal systems may not be sophisticated, may be incomplete, or may not have been tested for foreign investments.

The growing threat of trade wars

Since President Trump took office, international trade issues have been making headline news. Partner Janet Whittaker says: "Most actions that the President takes can be explained by his intense focus on his supporters and on maintaining the loyalty of his base. His other priority is to grow the US economy. He is doing strikingly well at achieving both."

However, while President Trump enjoys a high level of loyalty among Republicans and the US economy is thriving, his unconventional approach to international trade risks sparking a global trade war.

"The President's willingness to ride roughshod over traditional US alliances means that the administration is turning to trade actions that were previously little used, including pulling out of negotiated agreements (TPP), renegotiating existing agreements, and using national security

as a basis on which to impose steep tariffs on imports, including steel and aluminum, and now cars," says Whittaker.

At the heart of President Trump's trade policy is his desire to reduce the deficit, increase US manufacturing and combat Chinese "unfair" trade practices. His administration has renegotiated the United States-Korea Free Trade Agreement and the North America Free Trade Agreement with Canada and Mexico – an agreement which President Trump described as "the worst trade deal ever made" – and now rebranded as the United States-Mexico-Canada Agreement.

President Trump has attacked many trading partners, including the European Union, on the basis of the trade deficit and what he views as imbalanced tariffs, but his biggest target is China, both in terms of imposing trade restrictions and threatening to limit Chinese investment in the US. However, it is unclear what specifically the Administration wants with respect to China. Whittaker says that "it remains to be seen whether there is a real desire by the Administration to end the US-China trade war or whether instead it is intent on continuing to apply pressure on China in the belief that it will eventually force China to reform not only its trade practices but also its broader economic model." Whittaker also notes that the Administration is using its leverage with other countries to isolate the Chinese, for example, through a provision in the United States-Mexico-Canada Agreement, which may potentially disincentivise either Canada or Mexico from entering into a trade agreement with China.

What's next?

This turbulent climate for global trade is creating a great deal of uncertainty for business. The longer-term impacts are difficult to measure or predict, and will depend on how long the trade wars last and the form they take, how future trade agreements are constructed and their effectiveness in practice, and the wider effect of trade policies on international trade structures and institutions. The ability of businesses to respond and adapt to political change will become a critical part of their strategies in the future.

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